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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of )  
)  
AT&T Corp., VLT Co. L.L.C., Violet )  
License Co. LLC and TNV [Bahamas] )  
Limited Seek FCC Consent for Grant of )  
Section 214 Authority, Modification of )  
Authorizations and Assignment of Licenses )  
in Connection with Proposed Joint Venture )  
Between AT&T Corporation and British )  
Telecommunications plc )

IB Docket No. 98-212

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**REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC**

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**I. INTRODUCTION**

In initial comments filed on January 19, 1999, Level 3 Communications, LLC ("Level 3"), urged the Federal Communications Commission ("Commission" or "FCC") to condition its approval of the Global Venture of AT&T Corp. ("AT&T") and British Telecommunications plc ("BT") ("Global Venture") to ensure that BT cannot leverage its dominant position in the U.K. market to the competitive disadvantage of competing U.S. carriers. Level 3 recommended that the FCC condition its approval on (1) BT's offering unbundled local loops; (2) BT's provision of equal access; and (3) the classification of the Global Venture and its affiliates as dominant with respect to the U.S.-U.K. route, and the imposition of other safeguards.

None of the parties submitting comments on the proposed Global Venture assert that it should be regulated as a nondominant carrier or that no safeguards are necessary, and virtually all

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parties agree that approval of the Global Venture without conditions could have anticompetitive consequences in the U.S. market.<sup>1</sup> Level 3 therefore will not repeat those arguments here but will devote these brief reply comments to the two issues of particular importance to it -- namely, unbundled local loops and equal access.

## **II. DISCUSSION**

### **A. The Commission Should Condition Its Approval Upon BT's Offering of Unbundled Local Loops in the U.K.**

As we explained in our initial comments, the local loop is a key element in the competitive provision of end-to-end global seamless services on a cost-effective basis. As MCI WorldCom notes, BT still controls nearly 90 percent of U.K. local loops and receives 84 percent of retail revenues for the U.K. telecommunications sector.<sup>2</sup> Only if local loops are unbundled will emerging facilities-based carriers, such as Level 3, be able to co-locate equipment at BT's exchanges to deploy DSL and other advanced technologies that more effectively utilize the copper loop, and thus provide consumers ready access to innovative high-speed services.

For the reasons expressed by MCI WorldCom, the availability of xDSL or other BT broadband services for resale would not be an adequate substitute for local loop unbundling. The scope of BT's obligation (if any) to make its local broadband services available for resale has not

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<sup>1</sup> See Comments of Level 3 Communications, LLC, at 11-13, Comments of Sprint Communications Company L.P., at 2-7 (explaining why the Global Venture should be regulated as a dominant carrier). STAR Telecommunications asserts that the record is inadequate and that further information concerning accounting rates and facility agreements should be submitted and an additional round of comments solicited. Two commenters, Cable & Wireless and GTE, assert that the merger should not be approved because the proponents have not shown that the likelihood of substantial competitive harm is outweighed by procompetitive benefits.

<sup>2</sup> Comments of MCI WorldCom, Inc., at 7-8.



been firmly established. Allowing BT to deny competitors' access to unbundled loops and to restrict those competitors to resale of any broadband services BT might offer would inhibit competition in two significant respects. First, it would preclude competitors from ever deploying technologies other than those BT chooses to offer to its own customers. Second, BT could control the pace of its rivals' entry, as they would never be able to offer broadband services until BT elected to make them available.<sup>3</sup>

Moreover, the Commission has already recognized the importance of unbundled local loops. The FCC approved the proposed BT/MCI transaction, in part, because it anticipated that the European Union ("EU") and the U.K. would soon require unbundled local loops. The Office of Telecommunications ("OFTEL"), the U.K.'s telecommunications regulator, has only recently identified local loop unbundling as a possible requirement--and only as one of several options to encourage the deployment of higher bandwidth services to customers. Even if OFTEL concludes that unbundling the local loop is the appropriate option to expand bandwidth, implementation will require several months. In the meantime, BT remains in control of the vast majority of the local loops in the U.K.

Absent local loop unbundling, BT's market power and its bottleneck control of local loops in the U.K. provide it with the ability to favor the Global Venture and thereby inhibit competition. As noted by MCI WorldCom,<sup>4</sup> BT's ownership stake in AT&T's international operations will create

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<sup>3</sup> Comments of MCI WorldCom, Inc., at 14. BT has refused to offer partial private circuits at bandwidths greater than 2 Mbps. OFTEL is reviewing this practice as a possible refusal to supply telecommunications service in violation of BT's licence. See <http://www.oftel.gov.uk/competition/lis0199/htm> at 8.3-8.7.

<sup>4</sup> Comments of MCI WorldCom, Inc., at 6.



incentives for BT to favor AT&T as well as the Global Venture and its subsidiaries. Unless BT is required to make unbundled local loops available in the U.K., BT will have the ability and incentive to allow AT&T and/or the Global Venture to use BT's local loop network to deliver broadband services on an end-to-end basis, and to deny competitors, such as Level 3, access to the local loops they need if they are to provide similar services to customer locations in the U.K. This would inhibit competition in the provision of end-to-end global seamless services, particularly on the U.S.-U.K. route, to the ultimate detriment of the consumer. Thus, the FCC should not approve this transaction unless it also requires BT to offer unbundled local loop elements immediately.

**B. The FCC Should Condition Approval on BT's Implementation of Equal Access.**

If the FCC approves the Global Venture, the Commission should also condition its approval on BT's offering equal access to customers. In the *BT/MCI Order*, the Commission concluded that "[b]y not providing equal access to long distance carriers, BT is engaging in a form of non-price discrimination which allows it to leverage power over the local exchange to enhance its control over the U.K. long distance and international markets."<sup>5</sup> The FCC approved the BT/MCI transaction partially based on its expectation that the U.K. regulator would require equal access in the near future.<sup>6</sup>

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<sup>5</sup> *Merger of MCI Communications Corporation and British Telecommunications plc, Memorandum, Opinion and Order*, 12 FCC Rcd 15351 (1997) at ¶ 187.

<sup>6</sup> *Id.* at ¶ 323. The Commission specifically conditioned its approval of the merger "upon MCI's non-acceptance of BT traffic originated in the United Kingdom to the extent BT is found to be in non-compliance with U.K. regulations implementing the European Union's equal access requirements."



As noted by Sprint, AT&T itself argued in the BT/MCI proceeding that the absence of equal access in the U.K. seriously impedes the ability of U.S. carriers to compete with BT on the U.S.-U.K. route.<sup>7</sup> Specifically, AT&T contended that:

Inevitably, carriers denied equal access in the U.K. will experience higher unit costs of providing end-to-end U.S./U.K. two-way services, and their pricing in the U.S. as well as in the U.K. will reflect that fact.<sup>8</sup>

Little has changed in the intervening months to satisfy the Commission's expectation that the U.K. would quickly implement equal access. To the contrary, the U.K. now proposes to require equal access no earlier than December 2000 for national and international calls and to require equal access in late 2001 or shortly thereafter for other calls.<sup>9</sup>

Until BT actually implements equal access, the lack of equal access provides BT inherent advantages as the "default" provider of service to the competitive disadvantage of Level 3 and other new competitors. BT's provision of equal access would provide competitors such as Level 3 a fair opportunity to compete with the Global Venture and would afford customers a real opportunity to choose their preferred carrier. Conditioning approval of the Global Venture on BT's implementation of equal access will provide carriers such as Level 3 an opportunity to compete on a level playing field with the Global Venture.

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<sup>7</sup> Comments of Sprint Communications Company L.P., at 5.

<sup>8</sup> AT&T Reply Comments filed March 17, 1997 in Docket No. GN. 96-245, at 11-12.

<sup>9</sup> See GTE Comments in Opposition, at 19.

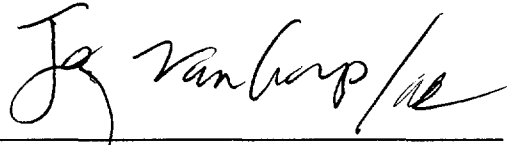


### III. CONCLUSION

For the reasons set forth herein and in its initial comments, Level 3 respectfully requests that the Commission approve the Global Venture of AT&T and BT only on the condition that (1) BT promptly offer unbundled local loops; (2) BT offer equal access; and (3) the Global Venture companies are subject to dominant carrier classification and other safeguards to ensure that the proposed transaction will serve the public interest, convenience and necessity.

Respectfully submitted,

**LEVEL 3 COMMUNICATIONS, LLC**

A handwritten signature in black ink, appearing to read "Jo Van Gorp", with a horizontal line drawn underneath it.

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Dated: February 17, 1999

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 17, 1999, a copy of the foregoing "Reply Comments of Level 3 Communications, LLC," in IB Docket No. 98-212, was delivered by First Class mail to the following:

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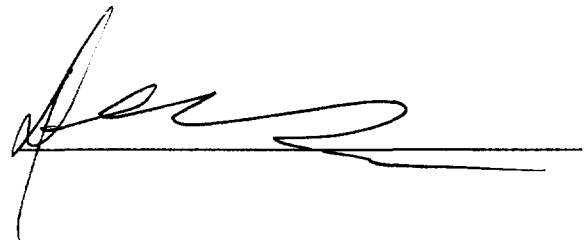
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